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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/601,665	12/28/2000	Jean-Claude Yvin	16721-0023	9528

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EXAMINER

HENLEY III, RAYMOND J

ART UNIT

PAPER NUMBER

1614

DATE MAILED: 07/28/2003

15

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/601,665

Applicant(s)

YVIN ET AL.

Examiner

Raymond J. Henley III

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 July 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 14-18, 20-22 and 24-28 is/are allowed.
- 6) ☒ Claim(s) 11-13, 19 and 23 is/are rejected.
- 7) ☒ Claim(s) 11 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☒ Interview Summary (PTO-413) Paper No(s). 15
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other:

CLAIMS 11-28 ARE PRESENTED FOR EXAMINATION

Applicants' responses filed June 9, 2003 and July 15, 2003 and the Amendment filed January 30, 2003 have been received and entered into the application.

The substitute specification has been entered and is in proper form. See the attached Interview Summary Record. As per the Amendment filed January 30, 2003, an Abstract has been added; the specification at page 10 has been amended, claims 1-10 have been canceled; and claims 11-28 have been amended.

All issues raised in the Office action dated September 24, 2002 have been successfully addressed and are hereby withdrawn.

Claim Objections

Claim 11 is objected to because of the following informalities: at line 5, it is set forth that the glucans may "optionally comprise (1->6)- β - branching, and oligosaccharides...", but it appears that a word such as "moiety" or "unit(s)" should follow the word "branching" in order to complete the clause. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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I Claim 19 and 23 is rejected under 35 U.S.C. 102(b) as being anticipated by Applicants' acknowledgment at page 5, line 25 – page 6, line 13 where it is acknowledged that the product as defined in claim 19 was known by others. Respecting claim 23, because the claim recites “comprising”, it reads on the entire product and not just the DP7 fraction.

It is recognized that applicants have not acknowledged that the product was useful for partially inhibiting apoptosis. However, this statement in claim 19 is merely a statement of intended use and does not impart any further physical or otherwise material limitation to the product as claimed and which was known.

II Claims 11-13 is rejected under 35 U.S.C. 102(b) as being anticipated by Williams et al., Carbohydrate Research, 235 (1992), 247-257 “Williams” (Cited by Applicants).

Williams teaches a water-soluble, sulfated (1->3)- β -D-glucan, i.e., glucan is a (1->3)- β -linked polyglucose compound. See the abstract. At the first sentence on page 247 under the heading “Introduction”, it is taught that the glucan which is subsequently sulfated is isolated from the inner cell wall of *Saccharomyces cerevisiae* which the Examiner interprets as being at least a chemical isolation process as required by claim 11.

It is noted that Williams does not teach that the compounds also contain (1->6)- β -branches, however, in claim 11 it is stated that such branches are optional and thus the reference is applicable.

Also, respecting claim 13, it would not appear that the glucans obtained from carrageenans, agars or prophyrans would be structurally distinct from those of the reference.

Finally, It is recognized that Williams has not acknowledged that the product was capable of modifying apoptosis dysfunctions. However, this statement in claim 11 is merely a statement

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of intended use and does not impart any further physical or otherwise material limitation to the product as claimed and which was known.

III Claims 11 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Tanaka et al. (U.S. Patent No. 5,641,643) (Cited by the Examiner).

Tanaka et al. teach a horseshoe crab amebocyte lysate, i.e., chemically derived, factor G activation inhibitor comprising as an active ingredient a polyglycoside containing at least one poly-(1->3)- β -D-glucoside, i.e., an oligosaccharide derived by a chemical process. See the abstract, for example.

It is noted that Tanaka et al. do not teach that the compounds also contain (1->6)- β -branches, or teach oligosaccharides derived by enzymatic or chemical process from sulfated glycans. However, in claim 11 it is stated that such branches and oligosaccharides are optional and thus the reference is applicable.

Also, respecting claim 13, it would not appear that the glucans obtained from carrageenans, agars or prophyrans would be structurally distinct from those polyglycosides of the reference.

Finally, It is recognized that Tanaka et al. have not acknowledged that the product was capable of modifying apoptosis dysfunctions. However, this statement in claim 11 is merely a statement of intended use and does not impart any further physical or otherwise material limitation to the product as claimed and which was known.

Allowable Subject Matter

Claims 14-18, 20-22 and 24-28 are deemed in condition for allowance because the Examiner can find no teaching in the art of record that would anticipate or render obvious the presently claimed products or methods.

Applicants' amendment necessitated the new grounds of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicants are reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raymond J. Henley III whose telephone number is 703-308-4652. The examiner can normally be reached on Flex.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marianne Seidel can be reached on 703-308-4725. The fax phone numbers for the

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organization where this application or proceeding is assigned are 703-308-4556 for regular communications and 703-308-4556 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1235.

A handwritten signature in black ink, appearing to read "Ray J. Henley III", written in a cursive style.

Raymond J. Henley III
Primary Examiner
Art Unit 1614

rjh
July 24, 2003